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Supreme Court of the United States

OCTOBER TERM, 1944.

No. 694

COPPERWELD STEEL COMPANY,
Appellant,

vs.

INDUSTRIAL COMMISSION OF OHIO,
Appellee.

BRIEF OF APPELLEE.

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Supreme Court of the United States

OCTOBER TERM, 1944.

No. 684.

COPPERWELD STEEL COMPANY,
Appellant,

vs.

INDUSTRIAL COMMISSION OF OHIO,
Appellee.

BRIEF OF APPELLEE.

STATEMENT OF THE CASE.

Since the statement of the case is set out in appellee's brief, no restatement thereof is deemed necessary herein.

QUESTIONS PRESENTED.

1. Is the question presented a federal question for the Supreme Court of the United States to consider?

2. Did the decision of the Supreme Court of Ohio on the demurrer to appellant's petition and amendment thereto constitute a deprivation of property without due process of law or a denial of the equal protection of the laws?

3. Has the appellant such a financial interest in the state insurance fund of Ohio that it can be heard to complain with respect to the distribution thereof?

SUMMARY OF ARGUMENT.

1. The Supreme Court is without jurisdiction to review this case for the following reasons: (1) there was not drawn in question the validity of a statute of the state of Ohio on the ground of its being repugnant to the Constitution of the United States; (2) a federal question was not drawn into question in the Supreme Court of Ohio; (3) the decision of a federal question was not necessary to the determination of the issues before the Supreme Court of Ohio; (4) the Supreme Court of Ohio rendered judgment without deciding a federal question.

2. The refusal of the Supreme Court of Ohio to grant the relief prayed for in appellant's petition and the amendment thereto, and the construction placed upon Section 871-38 of the General Code of Ohio by said court, does not operate to deprive the appellant of its property without due process of law or deny to it the qual protection of the laws.

3. The payment of the death benefits and compensation for injuries awarded by the appellee will not violate any constitutional rights secured to the appellant by the due process and equal protection clause of the Fourteenth Amendment to the Federal Constitution. The appellant has no financial interest in the state insurance fund and consequently the Ohio Supreme Court's refusal to enjoin distribution of moneys from such fund did not deprive appellant of any property without due process of law.

ARGUMENT.

I.

There Is No Federal Question Presented to the Supreme Court of the United States to Consider.

The record in this case discloses that the sole ground upon which the appellant relies to sustain the appellate jurisdiction of the Supreme Court of the United States is that the Supreme Court of Ohio sustained a demurrer to a petition and amendment thereto filed by it in an original action in said court, in which petition and amendment it is alleged that unless certain orders of the appellee are vacated, prohibited and enjoined, the appellant will be deprived of its property without due process of law and will be denied the equal protection of the laws. (R., 7, 22.)

Appellant, in the petition and amendment to the petition filed by it in the Supreme Court of Ohio, did not bring into question the validity of any statute of Ohio on the ground of its being repugnant to the Constitution of the United States, nor was such issue raised by appellee's demurrer. The sole questions presented to the Supreme Court of Ohio, after giving the petition and its amendment an interpretation most favorable to the appellant, were whether or not appellant had a right of appeal to the Supreme Court of Ohio under the provisions of Section 871-38 of the General Code of Ohio, and whether either prohibition or mandamus would lie against the appellee with respect to the relief sought.

The first of these questions was disposed of by reference to previous decisions of the court on the precise question. In regard thereto, it was stated in the opinion of the court by Williams, J. (R., 15):

> "Counsel for plaintiff request re-examination of our previous construction of that provision. It was early held that an employee could not bring a proceeding under that section for the allowance of compensation in addition to that which had previously been allowed. **Gatton v. Industrial Commission**, 93 Ohio St., 203, 112 N. E., 503. Recently it was decided that an employer has no right to have an order, fixing a premium rate, reviewed under this provision. **United States Wall Paper Co. v. Industrial Commission**, 132 Ohio St., 372, 7 N. E. (2d), 798. Since the decision in the **Gatton case** there have been many other decisions construing this section. It is now the established rule that its provisions do not confer upon this court power to review orders of the Industrial Commission allowing claims for injury or death arising out of or suffered in the course of employment but apply only to matters pertaining to the safety code. Orders reviewable thereunder are such as 'relate to places of employment and to safeguards touching the life, heath, and safety of employees.' **Pittsburgh Coal Co. v. Industrial Commission**, 108 Ohio St., 185, 188, 140 N. E., 684. **United States Wall Paper Co. v. Industrial Commission**, supra. In the two latter reported cases citations to other decisions may be found. Upon re-examination of the question we approve and follow the established rule that orders made by the Industrial Commission under the Workmen's Compensation Law are not reviewable under Section 871-38, General Code."

The meaning attributed by the highest court of a state to a statute of the state must be accepted by the United States Supreme Court, on review, as though it had been specifically expressed in the statute.

Quong, Ham, Wah Co. v. Industrial Accident Commission of California, 255 U. S., 445;
Supreme Lodge, Knights of Pythias, v. Meyer, 265 U. S., 30;
Saltonstall v. Saltonstall, 276 U. S., 260;
Senn v. Tilelayers Protective Union, 301 U. S., 468.

With respect to the other questions presented to it, the Supreme Court of Ohio said (R., 16):

"The plaintiff in its petition has not indicated exactly what kind of a writ is sought. It might be either injunction, prohibition or mandamus. Plaintiff's counsel do not specifically urge that injunction will lie but do ask for a writ 'enjoining the defendant.' Therefore, we give passing consideration to the applicability of the injunctive remedy. This court has power to grant an injunction **pendente lite** as ancillary to a cause of which it has jurisdiction, in order to preserve matters in **statu quo**. However, as to chancery cases in which an injunction is sought as a final remedy, original jurisdiction is vested by statute in the Court of Common Pleas. The Supreme Court has, under the Constitution, no original jurisdiction to afford such relief in chancery.

Counsel for plaintiff do contend that this action is 'in prohibition.' Prohibition is a remedy calculated to keep inferior tribunals from usurping power with which they have not been invested. It must be borne in mind that it is not sought herein to prevent a merit rating of a complying employer as was the case in **State, ex rel. Powhatan Mining Co. v. Industrial Commission**, 125 Ohio St., 272, 181 N. E., 99, 82 A. L. R., 938, but to control the action of the Industrial Commission with respect to the allowance or disallowance of certain claims. The power to hear claims and award death benefits and compensation for injuries has been expressly conferred upon the commission by Section 1465-90, General Code, and prohibition will not lie to curb the exercise of that power or to prevent the enforcement of a valid award after it has been made

upon claims properly before it, as were the claims in the case at bar.

Do facts pleaded state a cause of action in mandamus? Mandamus is frequently employed to keep the Industrial Commisison within legal bounds. The writ's use is limited to compelling the performance of a duty specially enjoined by law whether the failure to perform the duty results from an abuse of discretion, a violation of law, or otherwise."

The Construction Placed Upon Section 871-38 of the General Code of Ohio by the Supreme Court of Ohio to the Effect That Said Section Does Not Grant to the Appellant the Right to Have the Order of the Appellee Reviewed by Said Court, Does Not Deprive Appellant of Property Without Due Process of Law.

Appeals, rehearings, or judicial reviews are not essential to due process of law either in judicial or administrative proceedings.

James v. Appel, 192 U. S., 129;
Reetz v. Michigan, 188 U. S., 505;
Pittsburgh, C., C. and St. L. R. Co. v. Backus, 154 U. S., 421;
Andrews v. Swartz, 156 U. S., 272;
Twining v. New Jersey, 211 U. S., 78.

The power to render a final judgment must be lodged somewhere and in every case a point is reached where litigation must cease. What that point is can be determined by the legislative power of the state, for right of appeal is not essential to due process of law.

Standard Oil Co. v. Missouri, ex rel. Hadley, 224 U. S., 270.

There is no provision in the federal Constitution which forbids a state from granting to a tribunal, whether called

a court, board or commission, the final determination of a legal question. **Reetz v. Michigan**, 188 U. S., 505. No right to litigate the same question twice is guaranteed by the due process clause of the Fourteenth Amendment. The right of review in an appellate court is purely a matter of state concern; a denial of a right of appeal altogether would constitute no violation of the federal Constitution.

Kohl v. Lehlbach, 160 U. S., 293;
Baldwin v. Iowa State Traveling Men's Association, 283 U. S., 522.

Consequently, the Ohio Supreme Court's construction of a statute under which the appellant claimed the right to a review of the order of the appellee in the Supreme Court of Ohio, did not deprive appellant of its property without due process of law.

Moreover, the refusal of a writ of prohibition by the Supreme Court of Ohio was not a denial of due process. Prohibition is a preventive writ, designed to prevent a tribunal from proceeding in a matter which it is not authorized to hear and determine or in which it seeks to usurp or exercise a jurisdiction with which it has not been invested by law. **Marsh v. Goldthorpe**, 123 O. S., 103. The purpose of the writ of prohibition is to keep inferior courts or inferior tribunals, ministerial or otherwise, that possess an incidental judicial or quasi judicial power within the limits of their own jurisdiction. **State, ex rel. Nolan, v. ClenDening**, 93 O. S., 264; **State, ex rel. McCrehen, v. Brown**, 108 O. S., 454. Since the appellee is invested with power to hear claims and award death benefits and compensation for injuries and inasmuch as said death benefits and compensation for injuries had already been

awarded, nothing remained to be done save the ministerial act of paying the same, a writ of prohibition was properly denied by the Supreme Court of Ohio.

Likewise, since the appellant was seeking to **enjoin** the appellee from performing an act, purely ministerial in character, it can scarcely be contended that the Supreme Court of Ohio erred and in doing so deprived the appellant of due process by refusing to issue a writ of mandamus **compelling** the appellee to perform an act.

It is therefore respectfully submitted that a federal question was not presented for decision to the Supreme Court of Ohio and that a decision of a federal question was not necessary to the determination of the cause, and consequently this Honorable Court has no jurisdiction to review the decision of the Supreme Court of Ohio.

II.

The Jurisdiction of the Supreme Court of Ohio is Conferred by Section 2, Article IV of the State Constitution and the Limitations of That Jurisdiction Do Not Empower the Supreme Court of Ohio to Grant the Relief Suggested by the Appellant's Petition and Amendment Thereto; Thus, the Refusal of the Lower Court to Grant Appellant the Relief Prayed For Did Not Deprive it of Property Without Due Process of Law, Nor Did it Deny to it the Equal Protection of the Laws.

Neither the allegations of the appellant's petition in the lower court, nor those of the amendment thereto, reveal the kind of relief that appellant is seeking. After alleging that the four injured workmen and the dependents of the two killed workmen were allowed compensation and death benefits respectively, after a hearing upon the applications for reconsideration filed by the appellant, the plaintiff in the lower court alleged the circumstances of the accident of November 13, 1941, and set forth that the orders of the appellee were "unreasonable and unlawful" for eight reasons which are enumerated. The appellant continues to state that said orders are "contrary to law, constitute a gross abuse of discretion, if any, and of the power and authority, of the defendant and are beyond the jurisdiction of the defendant." Thereupon, the appellant states that "the aforesaid orders of the commission unless vacated, prohibited or enjoined will result in the merit, or individual, rating of the plaintiff's workmen's compensation risk to the prejudice of plaintiff, and in unlawfully charging and collecting from the plaintiff premiums therefor in excess

of those which should and may legally be charged and collected." For this reason, it says that unless the orders of the commission are "vacated, prohibited or enjoined" it will be deprived of "its property without due process of law" and will be denied "the equal protection of the laws." (R., 6, 7.)

The amendment to the petition states additional circumstances of the accident of November 13, 1941, and alleges that "the plaintiff * * * has a direct financial interest, to the extent of $20,008.62, plus the amount of additional premiums based on such claims in future years, in the unreasonable and unlawful allowance of the claims allowed herein and the distribution of the state insurance fund on account thereof." (R., 20, 21, 22.)

The prayer of the petition, which is renewed in the amendment thereto, asks for rather sweeping relief, namely: "(1) That the orders of the Industrial Commission be set aside, vacated and reversed; that the * * * claims and each of them be disallowed; (2) that a writ issue prohibiting and enjoining the defendant from continuing such orders or any of them in effect, from making any payments thereunder, from taking into consideration any payments which may have been made thereunder in the merit or individual rating of the plaintiff's workmen's compensation risk, and requiring the defendant to vacate such orders and disallow such claims; and (3) for all such further relief to which the plaintiff may be entitled."

The nebulous nature of the allegations of the petition and the prolixity of the prayer, of course, constrained the Supreme Court of Ohio to examine the Constitution of Ohio (Section 2 of Article IV) to discover whether the petition, the amendment thereto, and the prayer invoked the

jurisdiction conferred upon it by the fundamental law of the state.

This inquiry by the court into its own jurisdiction resulted in the conclusions announced in its two opinions (R., 12, 23) to the effect that plaintiff's petition and the amendment thereto did not invoke its jurisdiction as conferred upon it by the Constitution of Ohio. **This is the full extent and import of the judgment of the Supreme Court of Ohio dismissing appellant's petition and entering final judgment in behalf of the appellee.** The lower court, therefore, did not arrive at the point where it could consider whether any statute of Ohio was violative of the federal Constitution, because it **first** concluded that the facts set forth in appellant's petition did **not** raise any controversy the adjudication of which came within the constitutional limitations of its jurisdiction.

All that the appellant sought to achieve by instituting this action in the Supreme Court of Ohio was a judicial review of the decision of the appellee. The fact that such review was denied it and that the question of whether or not the appellee abused is discretion or usurped its jurisdiction was not considered by the Supreme Court of Ohio, lends no support to the claim made by the appellant that it was deprived of its property without due process of law and denied equal protection of the laws. Certainly, the appellant cannot be heard to say that it has been denied due process merely because in an action improperly instituted by it a court properly denied jurisdiction. Where a remedy exists to obtain relief from arbitrary or oppressive conduct of an administrative tribunal it can scarcely be contended that due process of law has been

denied to a person who fails to avail himself of such remedy, or chooses an improper mode in pursuing the same.

In **Louisville & Nashville Railway Company v. Garrett**, 231 U. S., 298, a Kentucky statute under which the railroad commission of that state was authorized to establish rates was under consideration by this Honorable Court. The statute and the action of the commission taken thereunder was attacked as violative of the rights secured to the railroad company by the federal Constitution. It was insisted that the failure to provide for an appeal to any court from the final order of the commission, or for a judicial review of the reasonableness of the prescribed rates before they became effective, made the statute void, and that, therefore, it operated to deprive the carrier of its property without due process of law and to deny to it the equal protection of the laws, contrary to the Fourteenth Amendment of the federal Constitution.

In answer thereto, Mr. Justice Hughes in delivering the opinion of the court, declared (beginning at page 311):

> "But the statute does not deny to the carrier the right of access to the courts for the purpose of determining any matter which would be the appropriate subject of judicial inquiry. We have not been referred to any decision of the state court holding that the statute should be so construed (Chicago, M. & St. P. R. Co. v. Minnesota, 134 U. S., 418, 456, 33 L. Ed., 970, 980, 3 Inters. Com. Rep., 209, 10 Sup. Ct. Rep., 462, 702). If the commission establishes rates that are so unreasonably low as to be confiscatory, an appropriate mode of obtaining relief is by bill in equity to restrain the enforcement of the order. Chicago M. & St. P. R. Co. v. Minnesota, 134 U. S., 418, 459, 460, 33 L. Ed., 970, 982, 983, 3 Inters. Com. Rep., 209, 10 Sup. Ct. Rep., 462, 702; St. Louis & S. F. R. Co. v. Gill, 156 U. S., 649, 659, 666, 39 L. Ed., 567, 570, 573, 15 Sup. Ct. Rep., 484; Ex Parte Young, 209 U. S., 123, 166, 52 L. Ed., 705, 731,

13 L. R. A. (N. S.), 932, 28 Sup. Ct. Rep., 441, 14 Ann. Cas., 764. Presumably, the courts of the state, as well as the federal courts, would be open to the carrier for this purpose (Home Teleph. & Teleg. Co. v. Los Angeles, 211 U. S., 265, 278, 53 L. Ed., 176, 184, 29 Sup. Ct. Rep., 50) without express statutory provision to that effect."

An examination of the pronouncement of this Honorable Court in the above case impels us to inquire: Has the appellant referred us to a decision of the state courts of Ohio holding that the Workmen's Compensation Act of that state should be construed so as to deny it access to the courts for the purpose of determining any matter which would be the appropriate subject of judicial inquiry?

Clearly, if the appellee in determining that the injuries involved occurred in the course of and arising out of the workmen's employment, usurped its jurisdiction, and acted arbitrarily, an appropriate mode of obtaining relief was open to him. The fact that the Supreme Court of Ohio held that a particular statute did not provide for a judicial review of the order made by the appellee certainly forms no basis for the argument that appellant is denied access to the courts of that state, nor can it be heard to complain because the Supreme Court of Ohio concluded that its original jurisdiction in prohibition and mandamus cannot properly be invoked to afford the relief sought.

III.

Even Though Appellant Had Instituted the Proper Action in a Court Having Jurisdiction to Afford the Relief Prayed For, Such Court Could Not Have Determined That the Payment of the Awards Made by the Appellee Would Deprive Appellant of Its Property Without Due Process of Law or Deny It the Equal Protection of the Law.

The pertinent sections of the Workmen's Compensation Law of Ohio, as the same were in effect at the time the claims involved herein were filed, provided that the Industrial Commission maintain a state insurance fund (Section 1465-53; App., p. 29); that every person defined as an employee therein (Section 1465-61; App., p. 30) or his dependents, shall be entitled to receive from the state insurance fund compensation or death benefits (Section 1465-68; App., p. 31); that the commission shall have full power and authority to hear and determine all questions within its jurisdiction, and its decisions thereon shall be final, except as provided in Section 1465-90 (Section 1465-90; App., p. 33). This latter section enumerates nine grounds for denial of compensation by the Industrial Commission which entitle the workman, or his dependents, to a rehearing. The section then sets forth that subsequent to the rehearing thus provided for, the commission shall again consider the claim and if the claim is again denied on any of the same nine grounds enumerated, then the workman, or his dependents, are entitled to an appeal to the Common Pleas Court where the right to participate in the state insurance fund may be pursued in accordance with the rules

of civil procedure. The rules of civil procedure of course give access to the appellate procedure provided for in the fabric of the general state law.

A canvass of these and other sections of the Workmen's Compensation Act reveals that an employer who has complied with the provisions of the act has no interest whatever in the distribution of the state insurance fund. His interest lies only in the creation of that fund, and that interest is confined to the amount of premiums he pays in the future. This principle is discussed by the Supreme Court of Ohio in the interlocutory opinion where Williams, J., in speaking for the court, says:

> "The complying employer has no direct financial interest in the distribution of the state insurance fund. His interest lies in basic and merit ratings and the amount he is required to pay in premiums. With respect to the subject matter involved in a proceeding upon a claimant's application for compensation under Section 1465-90, General Code, the complying employer's interest is remote." (R., 16, 17.)

Again, in the final opinion of the Supreme Court of Ohio, Williams, J., speaks for the court as follows:

> "In considering the question of due process and equal protection of the laws it is necessary to have in mind that a complying employer is not a necessary or a proper party to the proceeding under Section 1465-90, General Code, for the allowance of compensation. That statute does not provide for his being brought in. His only direct financial interest is, not in the distribution of the fund or in the fund itself, but in the creation of it, that is, in the amount of premiums he pays in the future. Since he has no interest in the fund or its distribution and is not even a proper party to the proceeding, he is not denied a constitutional right by the allowance of a claim for compensation. He is not aggrieved, if at all, until the commission applies 'that form of rating system which, in its judgment, is best

calculated to merit or individually rate the risk more equitably, predicated upon the basis of its individual industrial accident experience and to encourage and stimulate accident prevention,' pursuant to Section 1465-54, paragraph 3 (formerly paragraph 4), General Code. When action is taken in merit rating, which determines the amount of premiums an employer is required to pay, then for the first time his financial interest is affected."

It thus becomes apparent that the jurisdiction of the commission in so far as it concerns awards made to injured workmen or their dependents is quite separate and distinct from an employer's interest in the premiums he may be required to pay into the fund at some future date. Appellant's obligation to pay increased premiums into the state insurance fund on account of the merit rating system provided for in Section 1465-54, General Code of Ohio, **does not necessarily flow from the adjudication of the commission that an award be made to an injured workman or his dependents.** It must be remembered that the action sought to be brought in the Supreme Court of Ohio was not one in which the appellant sought to prevent a wrongful application of the merit rating system as was true in **State, ex rel. Powhatan Mining Company, v. Industrial Commission**, 125 O. S., 272, but, to the contrary, it was an effort on the part of the appellant to prematurely forestall any adverse merit rating calculation by interfering with the complete discretion invested in the Industrial Commission to adjudicate the claims of injured workmen or their dependents as clearly provided for in Section 1465-90, General Code of Ohio.

The purpose of the Workmen's Compensation Act is to reimburse for impairment of earning capacity without the uncertainties of litigation and the attendant delays, risks,

and expenses. In other words, it provides a cheap and expeditious remedy which could hardly be afforded by the average workman if he were compelled to engage in protracted and expensive litigation which might be induced by the superior financial resources of his employer. **Industrial Commission v. Drake**, 103 O. S., 628. If in each case the employer could circumvent the favorable consideration by the commission of the employee's claim by questioning the jurisdiction of the commission under Section 1465-90, General Code of Ohio, to make the award, then is it clear beyond cavil that every claim could be made, not a cheap and expeditious adjudication by the Industrial Commission, but a contest between the employee and his employer as to whether or not he should receive compensation. Surely, this is not the purpose of Workmen's Compensation Law and the validation of such a form of procedure would vitiate the claimant's rights under Section 1465-90, General Code, and would deprive him of his day in court by way of hearing, rehearing, and appeal to the Common Pleas Court, Court of Appeals, and Supreme Court. The impropriety of such a conclusion is emphasized by the fact that it is not at all necessary for an employer to attack an employee's right to an award in order to protect his prospective financial interest in the state insurance fund.

Furthermore, even though the appellant had instituted a proper action in a court having jurisdiction to afford the relief prayed for, on the ground that the appellee had arbitrarily and unlawfully exceeded its jurisdiction, it seems evident that such court would be constrained to find that as long as the commission had construed the phrase "in the course of employment" in substantial conformity with

the pronouncements of the Supreme Court of Ohio and the Courts of Appeals thereof, it could not be accused of acting without its jurisdiction.

Section 35 of Article II (App., p. 25) of the Constitution of Ohio provides that "For the purpose of providing compensation to workmen and their dependents, for death, injuries or occupational disease, occasioned in the course of such workmen's employment, laws may be passed * * *." Pursuant to this constitutional authority, the term "injury" as contemplated by the Workmen's Compensation Act is defined in Section 1465-68, General Code of Ohio, as follows:

> "The term 'injury' as used in this section and in the Workmen's Compensation Act shall include any injury received in the course of, and arising out of, the injured employee's employment."

Pursuant to Section 35 of Article II of the Constitution of Ohio and Section 1465-68, General Code of Ohio, the term "injury" has been construed a number of times by our state courts.

In **Industrial Commission of Ohio v. Barber**, 117 O. S., 373, the syllabus reads as follows:

> "1. An employe, who for the purpose of reaching his place of employment travels a course which affords the only unobstructed access thereto, enters upon the course of his employment within the contemplation of the Workmen's Compensation Law when he reaches the zone of such employment that is under the control of his employer, even though such zone be outside the inclosure of his employer.
>
> 2. The hazards of such zone growing out of the conditions and environments of his employment are hazards of his employment, and an injury received by an employe due to such hazards is compensable out of the industrial insurance fund of the Workmen's Compensation Law."

In **Industrial Commission of Ohio v. Henry**, 124 O. S., 616, the syllabus reads as follows:

"1. Where the claimant's decedent had entered upon his employment in the early morning hours, had left the premises of the employer to get his breakfast at a restaurant, in accordance with a custom acquiesced in by the employer, and, while returning to the premises of the employer by a direct and necessary route along a public thoroughfare, was struck by a train running upon the tracks of a railroad so immediately adjacent to the premises of the employer that the only way of ingress and egress toward the restaurant was one of hazard, the accident arose out of and in the course of the decedent's employment.

2. In such case, upon trial of an appeal from a denial of compensation by the Industrial Commission upon jurisdictional grounds, it is not reversible error for the trial court to charge that the jury should take into consideration the nature of the employment, the hours of service required of the decedent, the nature and condition of the premises where the deceased was employed, and of the premises surrounding the same, the natural and ordinary conduct of persons so employed during such hours while acting in such employment."

The syllabus of **Spellman v. Industrial Commission of Ohio**, 73 O. App., 369, reads as follows:

"Where an automobile, in which two employees were riding, was struck by a cut of freight cars being switched on railroad tracks contiguous to the employer's premises at a time when such employees were about to enter the premises to commence their day's work, the one employee's death and the other's injury, resulting from such accident, arose out of and in the course of their employment within the meaning of the Workmen's Compensation Act, since the tracks were so immediately adjacent to the employer's premises that the only way of ingress and egress to the latter was one of hazard and inasmuch as such tracks were in such proximity to the premises that the former may

be said, under all the circumstances, to be within the zone of such employees' employment."

An examination of the above pronouncements reveals that the Industrial Commission, in allowing the claims growing out of the injuries involved in the case at bar, did not depart in any substantial manner from the construction of the term "in the course of, and arising out of, the injured employee's employment" as enunciated by the courts of the state.

It is too well-established to require extensive citation that this Honorable Court will not disturb the construction attributed to a state statute by the courts of that state.

In **Des Moines National Bank v. Fairweather**, 263 U. S., 103, the court said:

"We are asked to go into the proper construction of the state statute and its validity under the state Constitution. But these are questions of local law, the decision of which by the Supreme Court of the state is controlling."

Moreover, the Supreme Court of the United States, in **Cudahy Packing Company v. Parramore**, 263 U. S., 418, in construing the provisions of the Utah Workmen's Compensation Act, which provides for the payment of compensation for personal injury or death of an employee by accident "arising out of or in the course of his employment," found in the first branch of the syllabus as follows:

"A decision of a state court that the Workmen's Compensation Act of the state applies to injuries occurring to an employee on his way to work before the hour for beginning work has arrived is binding on the Supreme Court of the United States."

Mr. Justice Sutherland, in delivering the opinion of the court in **Cudahy Packing Company v. Parramore**, states:

> "It is settled by the decisions of this court and by an overwhelming array of state decisions, that such statutes are not open to constitutional objection because they abrogate common-law defenses or impose liability without fault. But the contention here, shortly stated, is that the accident was one which occurred off the premises of the employer, on a public road, outside the hours of employment, and while the employee was not engaged in any business of the employer; that it was not the result of any industrial risk, but arose from a common peril to which the public generally was exposed; and that consequently liability is imposed arbitrarily and capriciously. It may be assumed that where an accident is in no manner related to the employment, an attempt to make the employer liable would be so clearly unreasonable and arbitrary as to subject it to the ban of the Constitution; but where the accident has any such relation we should be cautious about declaring a state statute creating liability against the employer invalid upon that ground. The modern development and growth of industry; with the consequent changes in the relations of employer and employee, have been so profound in character and degree as to take away, in large measure, the applicability of the doctrines upon which rest the common-law liability of the master for personal injuries to a servant, leaving, of necessity, a field of debatable ground where a good deal must be conceded in favor of forms of legislation calculated to establish new bases of liability more in harmony with these changed conditions."

Mr. Justice Sutherland then very pointedly states:

> "Workmen's compensation legislation rests upon the idea of status, not upon that of implied contract; that is, upon the conception that the injured workman is entitled to compensation for an injury sustained in the service of an industry to whose operations he contributes his work as the owner contributes his capital,

> —the one for the sake of the wages and the other for the sake of the profits. The liability is based, not upon any act or omission of the employer, but upon the existence of the relationship which the employee bears to the employment because of and in the course of which he has been injured. * * * The fact that the accident happens upon a public road or at a railroad crossing, and that the danger is one to which the general public is likewise exposed, is not conclusive against the existence of such causal relationship, if the danger be one to which the employee, by reason of and in connection with his employment, is subjected peculiarly or to an abnormal degree."

An analysis of the Parramore decision would seem to indicate that if this Honorable Court had the proper opportunity to review the reasonableness of the decision of the Industrial Commission of Ohio in the claims involved in the case at bar, the doctrine enunciated in **Cudahy Packing Company v. Parramore**, supra, would impel the court to the conclusion that the Industrial Commission of Ohio had acted well within the jurisdiction conferred upon it by the Constitution and statutes of that state.

IV.

Appellant is Not Denied the Equal Protection of the Laws.

While not strenuously pressed by it, the appellant suggests in his brief (pp. 11, 12, 38) that it is denied the equal protection of the laws by reason of the fact that the so-called "self-insuring employers" and "non-complying employers" have a legal right to a judicial determination of the question as to whether or not the injury or death occurred in the course of and arose out of the employment, while the complying employer has no right to a judicial review of the order of the Industrial Commission awarding compensation.

In this connection it must be borne in mind that when an award for compensation is made to an employee of a self-insuring employer or non-complying employer, such employer is required by law to pay the full amount of the award, while a complying employer, in the event an award is made to one of his employees, has no such obligation.

True, any compensation or death benefit paid from the state insurance fund on account of an injury or the death of an employee the latter employer might or might not result in an increase in the rate of such employer's premium. However, if such increase does result from the payment of an award wrongfully made by the Industrial Commission, such employer, as pointed out by Judge Wilhams in the opinion of the court below "could refuse to pay the premium assessed against him, and upon suit to recover the same, make his defense if any he has."

It is therefore apparent that there is furnished to each type of employer an appropriate method of obtaining re-

lief against an unlawful assessment, whether such assessment be for the full amount of compensation awarded or for the premium claimed to be due the insurance fund.

CONCLUSION.

In conclusion, it is respectfully submitted that a federal question was not drawn into this case before the Supreme Court of Ohio, nor was it necessary for such court in determining all of the issues presented to it by the pleadings, to decide a federal question.

The Ohio Supreme Court's construction of the Ohio statute under which the appellant claims a right to a judicial review of the action taken by the appellee in making the awards involved herein, does not deprive the appellant of his property without due process of law; nor does such court's refusal to prohibit and enjoin distribution from the state insurance fund on the appellant's application therefor by prohibition and mandamus, deny to appellant any rights given him by the "due process" and "equal protection" clause of the Fourteenth Amendment to the Constitution of the United States.

Respectfully submitted,

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APPENDIX A.

Extracts from the Constitution of Ohio and the Workmen's Compensation Act of Ohio.

Article II, Section 35 of the Constitution of Ohio.

For the purpose of providing compensation to workmen and their dependents, for death, injuries or occupational disease, occasioned in the course of such workmen's employment, laws may be passed establishing a state fund to be created by compulsory contribution thereto by employers, and administered by the state, determining the terms and conditions upon which payment shall be made therefrom. Such compensation shall be in lieu of all other rights to compensation, or damages, for such death, injuries, or occupational disease, and any employer who pays the premium or compensation provided by law, passed in accordance herewith, shall not be liable to respond in damages at common law or by statute for such death, injuries or occupational disease. Laws may be passed establishing a board which may be empowered to classify all occupations, according to their degree of hazard, to fix rates of contribution to such fund according to such classification, and to collect, administer and distribute such fund, and to determine all rights of claimants thereto. Such board shall set aside as a separate fund such proportion of the contributions paid by employers as in its judgment may be necessary, not to exceed one per centum thereof in any year, and so as to equalize, in so far as possible, the burden thereof, to be expended by such board in such manner as may be provided by law for the investigation and prevention of industrial accidents and diseases.

Such board shall have full power and authority to hear and determine whether or not an injury, disease or death resulted because of the failure of the employer to comply with any specific requirement for the protection of the lives, health or safety of employes, enacted by the General Assembly or in the form of an order adopted by such board, and its decision shall be final; and for the purpose of such investigations and inquiries it may appoint referees. When it is found, upon hearing, that an injury, disease or death resulted because of such failure by the employer, such amount as shall be found to be just, not greater than fifty nor less than fifteen per centum of the maximum award established by law, shall be added by the board, to the amount of the compensation that may be awarded on account of such injury, disease, or death, and paid in like manner as other awards; and, if such compensation is paid from the state fund, the premium of such employer shall be increased in such amount, covering such period of time as may be fixed, as will recoup the state fund in the amount of such additional award, notwithstanding any and all other provisions in this constitution.

Article IV, Section 2 of the Constitution of Ohio.

The supreme court shall, until otherwise provided by law, consist of a chief justice and six judges, and the judges now in office in that court shall continue therein until the end of the terms for which they were respectively elected, unless they are removed, die or resign. A majority of the supreme court shall be necessary to constitute a quorum or to pronounce a decision, except as hereinafter provided. It shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition and procedendo, and appellate jurisdiction in all cases involving

questions arising under the constitution of the United States or of this state, in cases of felony on leave first obtained, and in cases which originated in the courts of appeals, and such revisory jurisdiction of the proceedings of administrative officers as may be conferred by law. It shall hold at least one term in each year at the seat of government, and such other terms, there or elsewhere, as may be provided by law. The judges of the supreme court shall be elected by the electors of the state at large for such term, not less than six years, as may be prescribed by law, and they shall be elected, and their official term shall begin, at such time as may now or hereafter be fixed by law. Whenever the judges of the supreme court shall be equally divided in opinion as to the merits of any case before them and are unable for that reason to agree upon a judgment, that fact shall be entered upon the record and such entry shall be held to constitute an affirmance of the judgment of the court below. No law shall be held unconstitutional and void by the supreme court without the concurrence of at least all but one of the judges, except in the affirmance of a judgment of the court of appeals declaring a law unconstitutional and void. In cases of public or great general interest the supreme court may, within such limitation of time as may be prescribed by law, direct any court of appeals to certify its record to the supreme court, and may review, and affirm, modify or reverse the judgment of the court of appeals. All cases pending in the supreme court at the time of the adoption of this amendment by the people, shall proceed to judgment in the manner provided by existing law. No law shall be passed or rule made whereby any person shall be prevented from invoking the original jurisdiction of the supreme court.

Section 871-38, General Code of Ohio.

Any employer or other person in interest being dissatisfied with any order of the commission may commence an action in the supreme court of Ohio, against the commission as defendant to set aside, vacate or amend any such order on the ground that the order is unreasonable or unlawful and the supreme court is hereby authorized and vested with exclusive jurisdiction to hear and determine such action. The commission shall be served with summons as in other civil cases.

The answer of the commission shall be filed within ten days after service of summons upon it and with its answer it shall file a certified transcript of its record in said matter. Upon the filing of said answer said action shall be at issue and shall be advanced and assigned for trial by the court, upon the application of either party, at the earliest possible date.

Section 1465-44, General Code of Ohio.

The board shall adopt reasonable and proper rules to govern its procedure, regulate and provide for the kind and character of notices, and the services thereof, in cases of accident and injury to employes, the nature and extent of the proofs and evidence, and the method of taking and furnishing the same, to establish the right to benefits of compensation from the state insurance fund, hereinafter provided for, the forms of application of those claiming to be entitled to benefits or compensation therefrom, the method of making investigations, physical examinations and inspections, and prescribe the time within which adjudications and awards shall be made.

Section 1465-53, General Code of Ohio.

The industrial commission of Ohio shall classify occupations or industries with respect to their degree of hazard, and determine the risks of the different classes and fix the rates of premium of the risks of the same, based upon the total payroll in each of said classes of occupation or industry sufficiently large to provide an adequate fund for the compensation provided for in this act, and to maintain a state insurance fund from year to year, provided, however, that where the payroll cannot be obtained or, in the opinion of the commission, is not an adequate measure for determining the premium to be paid for the degree of hazard, the commission may determine the rates of premium upon such oher basis, consistent with insurance principles, as shall be equitable in view of the degree of hazard, and whenever in this sub-chapter reference is made to payroll or expenditure of wages with reference to fixing premiums such reference shall be construed to have been made also to such other basis for fixing the rates of premium as the commission may in the foregoing instances determine. Nothing herein shall be construed to prohibit the industrial commission from establishing a minimum premium for different classes, which minimum premium shall be the lowest advance or adjusted premium amount for which a certificate entitling the employer to protection under the workmen's compensation law may be issued, for a six months' period or any part thereof, regardless of payroll amount and notwithstanding any of the provisions of section 1465-55, paragraph 3.

Section 1465-61, General Code of Ohio.

The term "employee," "workman" and "operative" as used in this act shall be construed to mean:

1. Every person in the service of the state, or of any county, city, township, incorporated village or school district therein, including regular members of lawfully constituted police and fire departments of cities and villages, under any appointment or contract of hire, express or implied, oral or written, except any official of the state, or of any county, city, township, incorporated village or school district therein. Provided that nothing in this act shall apply to police or firemen in cities where the injured policemen or firemen are eligible to participate in any policemen's or firemen's pension funds which are now or hereafter may be established and maintained by municipal authority under existing laws, unless the amount of the pension funds provided by municipal taxation and paid to such police or firemen shall be less than they would have received had the municipality no such pension funds provided by law; in which event such police and firemen shall be entitled to receive the regular state compensation provided for police and firemen in municipalities where no policemen's or firemen's pension funds have been created under the law; less, however, the sum or sums received by the said policemen or firemen from said pension funds provided by municipal taxation, and the sum or sums so paid to said policemen or firemen from said pension funds shall be certified to the industrial commission of Ohio by the treasurer or other officer controlling such pension funds.

2. Every person in the service of any person, firm or private corporation, including any public service corpora-

tion, employing three or more workmen or operatives regularly in the same business, or in or about the same establishment under any contract of hire, express or implied, oral or written, including aliens and minors, but not including any person whose employment is but casual and not in the usual course of trade, business, profession or occupation of his employer.

3. Every person in the service of any independent contractor or sub-contractor who has failed to pay into the state insurance fund the amount of premium determined and fixed by the industrial commission of Ohio for his employment or occupation, or to elect to pay compensation direct to his injured and to the dependents of his killed employes, as provided in section 1465-69, General Code, shall be considered as the employe of the person who has entered into a contract, whether written or verbal with such independent contractor unless such employes, or their legal representatives or beneficiaries elect, after injury or death, to regard such independent contractor as the employer.

Section 1465-68, General Code of Ohio.

Every employee mentioned in section 1465-61, who is injured, and the dependents of such as are killed in the course of employment, wheresoever such injury has occurred, provided the same was not purposely self-inflicted, on and after January 1st, 1914, shall be entitled to receive, either directly from his employer as provided in section 1465-69, or from the state insurance fund, such compensation for loss sustained on account of such injury or death, and such medical, nurse and hospital services and medi

cines, and such amount of funeral expenses in case of death as provided by sections 1465-79 to 1465-87 inclusive.

Whenever, with respect to an employee of an employer who is subject to and has complied with the provisions of this act; there is possibility of conflict with respect to the application of workmen's compensation laws because the contract of employment is entered into and all or some portion of the work is or is to be performed in different states, the employer and the employee may agree to be bound by the laws of this state or by the laws of some other state in which all or some portion of the work of the employee is to be performed. Such agreement shall be in writing and shall be filed with the industrial commission of Ohio within ten days after it is executed and shall remain in force until terminated or modified by agreement of the parties similarly filed. If the agreement is to be bound by the laws of this state and the employer has complied with the provisions of this act, then the employee shall be entitled to compensation and benefits regardless of where the injury occurred or the disease was contracted and the rights of the employee and his dependents under the laws of this state shall be exclusive remedy against the employer on account of injury, disease or death in the course of and arising out of his employment. If the agreement is to be bound by the laws of another state and the employer has complied with the laws of that state, the rights of the employee and his dependents under the laws of that state shall be the exclusive remedy against the employer on account of injury, disease or death in the course of and arising out of his employment without regard to the place where the injury was sustained or the disease contracted.

If any employee or his dependents shall be awarded workmen's compensation benefits or shall recover damages from the employer under the laws of another state, the amount so awarded or recovered, whether paid or to be paid in future installments, shall be credited on the amount of any award of compensation or benefits made to the employee or his dependents by the industrial commission of Ohio.

If an employee is a resident of a state other than this state and is insured under the workmen's compensation act or similar acts of a state other than this state, such employee and his dependents shall not be entitled to receive compensation or benefits under the provisions of this act on account of injury, disease or death arising out of or in the course of employment while temporarily within this state and the rights of such employee and his dependents under the laws of such other state shall be the exclusive remedy against the employer on account of such injury, disease or death.

The term "injury" as used in this section and in the workmen's compensation act shall include any injury received in the course of, and arising out of, the injured employee's employment.

Section 1465-90, General Code of Ohio.

The commission shall have full power and authority to hear and determine all questions within its jurisdiction, and its decisions thereon, shall be final, except as provided in this section. The commission shall definitely and specifically pass upon each and every issue raised in the claim, necessary for a proper and complete decision thereon. In all claims for compensation on account of injury, or

death resulting therefrom, if the commission denies the right of the claimant to receive compensation or to continue to receive compensation the order of the commission shall state the ground or grounds on which the claim was denied; and if the claim was denied on any of the following grounds: that the injury was self-inflicted; that the injured person was not an employe; that the injury did not occur in the course of or arise out of the employment; that the claimant's disability is not the result of the injury; that the claimant having received compensation for the period of temporary total disability and having received the maximum amount of compensation for temporary partial disability as provided in this act, and having engaged in no gainful occupation for the period of four years prior to the decision of the commission, during which time compensation has been payable to such claimant, is not permanently and totally disabled as a result of the injury; that the death did not result from the injury; that the claimant was not legally or actually dependent upon the decedent; or that the employer was not amenable to the law; then the claimant may within thirty days after receipt of notice of such finding of the commission, file an application with the commission for a rehearing of his claim, whereupon the former action of the commission thereon shall be vacated. If the order of the commission does not state the ground or grounds on which the claim was denied, or if the order of the industrial commission is not definite in such regards, the claimant may maintain an action in mandamus against the commission in the supreme court of Ohio, and, if the final order in such proceedings directs the commission to state the ground or

grounds of its order or make the order definite as to the ground or grounds thereof, then there shall be taxed as part of the costs assessed against the commission an attorney fee in the amount of $250.00. The commission shall fix a date for rehearing of such claim and give the claimant and his employer at least one week's prior notice thereof; at said hearing, if the claimant is asking for compensation from the state fund, the attorney general, or any one or more of his assistants or special counsel who have been designated by him to act as attorney to the commission, may represent the state fund, and in the absence of the attorney general or his designated assistants or special counsel, the commission shall elect one or more of the attorneys in the employ of the industrial commission to represent the state fund. Such hearing shall be had and the evidence for and against the allowance of the claim submitted as in the trial of civil actions. The commission shall pass upon the admissibility of evidence, but either party may at the time make objection and take exception to the rulings of the commission thereon, and if the commission refuses to admit any evidence, the party offering the same shall state the nature of such evidence and the matter which such party proposes to prove thereby, and such statement shall be made a part of the record of such rehearing. Such rehearing may be continued from time to time.

If the commission, after such hearing denies the right of the claimant to receive or to continue to receive compensation it shall state the ground or grounds on which the claim was denied and if the claim was denied on any of the grounds hereinabove specifically stated then the claimant, within sixty days after receipt of notice of such action

of the commission, may file a petition in the common pleas court of the county wherein the injury was inflicted, or in the common pleas court of the county wherein the contract of employment was made in cases where the injury occurs outside the state of Ohio. If the claimant is seeking compensation from the state insurance fund, the defendant in such action shall be the industrial commission and summons shall be issued to the industrial commission and also to the attorney general. If the claimant is seeking compensation from an employer who has qualified to pay compensation direct, as provided by section 1465-69, or from an employer who has failed to comply with this act, the defendant in such action shall be such employer and summons shall issue to such employer. Further pleadings shall be had in accordance with the rules of civil procedure. The attorney general shall designate one or more of his assistants or special counsel to act as counsel for the commission and he shall call upon the prosecuting attorney of the county in which the suit is pending to render such assistance in connection therewith as he, the attorney general, may deem necessary; and if, for any reason at any stage of such proceeding, the attorney general, his assistants or special counsel do not appear for or represent and defend the commission, the commission shall select one or more of the attorneys in the employ of the industrial commission to represent the commission.

Within ten days after the filing of the answer the indutrial commission shall certify to such court a transcript of the record of such rehearing, and the court, or the jury, under the instructions of the court, if a jury is demanded, shall determine the right of the claimant to par-

ticipate or to continue to participate in such fund upon the evidence contained in such record and no other evidence; but the court may exclude from evidence such portions of the transcript which are not competent, material or relevent evidence and to which objection was made or and exception taken at such rehearing before the commission and may admit in evidence such competent, material or relevant evidence as was excluded by the commission at such rehearing, over the objection and exception of the party offering the same. If the finding of the court or the verdict of the jury is in favor of the claimant's right to participate or to continue to participate in such fund, the court shall certify such finding or verdict to the industrial commission and the commission shall thereupon order compensation to be paid in the manner provided by this act for the payment of other awards, and such certificate of the court shall be entered in the records of judgments of such court and shall for the purpose of error proceedings, be in lieu of final judgment in such cause but notwithstanding the judgment rendered, the commission may modify or revoke a finding that the claimant is permanently and totally disabled if it finds on evidence that the claimant is thereafter capable of doing work.

No such certificate shall be placed upon the record of judgments until such certificate has been submitted to the attorney general and no entry except an entry setting forth the trial of the case and the verdict of the jury shall be placed upon the record of the court until such entry has been so submitted.

The cost of any legal proceedings, authorized by this section, including an attorney's fee to the claimant's attorney to be fixed by the trial judge, shall be taxed against

the unsuccessful party; provided, however, that such attorney fee shall not exceed twenty per cent of any award up to the sum of five hundred dollars, and 10 per cent on all amounts in excess thereof, but in no event shall such fee exceed the sum of five hundred dollars. Either party in any of such proceedings shall have the right to prosecute error as in the ordinary civil cases. Such right of rehearing before the commission and of appeal from the decision of the commission on such rehearing where such decision denies compensation to a claimant on the grounds hereinbefore specified, shall apply to a claimant in cases in which an employer is a contributor to the state insurance fund or has elected to compensate his employes directly under the provisions of section 1465-69, or has failed and neglected to comply with the provisions of section 1465-69.

APPENDIX B.

Rules of the Industrial Commission of Ohio Governing Procedure in Claims Against the State Insurance Fund and the State Occupational Disease Fund.

Rule 1—Sessions of the Commission.

Sessions of the Commission will be held regularly at the offices of the Commission in the city of Columbus, beginning at 9:00 a. m. of each business day, and continuing until the business of the day is completed.

Rule 7—Employer to Keep Record of Injury, Disability or Death.

Every employer shall keep a record of all injuries, fatal or otherwise and of all cases of disability or death resulting from occupational disease, received or contracted by his employes in the course of their employment. It is the duty of the employer to report all injuries and occupational diseases promptly to the Industrial Commission.

8—Procedure for Completing Applications for Injury or Occupational Disease.

Part I of each application for payment of compensation and/or for medical expense should first be completed by the employer, except for his signature, then Part II by the claimant, then Part III by the attending physician, who should return it to the employer to sign and mail to the Industrial Commission of Ohio, Claims Section, Columbus, Ohio.

If the employer finds, or has reasonable grounds to believe that the claimant's application, or the attending

physician's report, is not correct, he should make a statement to that effect in the space provided for "remarks" and should submit a separate report setting forth the reasons he does not believe the report of the claimant, or the attending physician to be correct, and such separate report may be attached to the original application bearing the full name of the injured or diseased employe.

The employer should in all instances co-operate with and assist the injured employe in completing his application and should see that the accident is fully described and that the nature and extent of the injury, or injuries, is fully disclosed and that the application is submitted to the Commission at the earliest possible date. If, for any reason, the employer fails, neglects, or refuses to furnish a proper form or to complete an application, or to mail same to the Industrial Commission, a proper form should be secured from the Industrial Commission and the claimant may complete his application thereon and state that the employer has failed, neglected, or refused to furnish or complete a proper application. Such application should then be mailed promptly to the Industrial Commission, Claims Section, Columbus, Ohio.

In the event the injured employe is unable to complete an application for payment of compensation or medical expense on account of injury, or occupational disease, because of some physical disability, the application may be completed and filed by the employer or the next friend of the injured employe. In event of mental disability or incompetency, the application should be completed and filed by the employer, the next friend, or guardian of the employe.

Rule 12—Proof, How Made.

The proof of all claims shall be made by affidavit as far as possible, but the Commission, or any of its duly authorized representatives, shall have the right at any time, either before or after an award, to require the claimant to submit to a physical examination, or to refer the case for investigation, or for the taking of oral testimony, to determine the cause and extent of the injury or occupational disease. Depositions of witnesses may be taken and filed by a claimant or employer in accordance with Section 1465-50, G. C.

Failure on the part of the claimant to complete in detail, forms specified, or to submit other proof which may be requested, may be considered as sufficient reason to withhold action on the claim and to cancel the actuarial reserve against the claim. However, upon the filing of necessary proof the claim will be given such further consideration as may be indicated.

Rule 17—Hearing.

Claims for awards will be considered as assigned by the Commission on each week day not a legal holiday. Claimants and employers may appear before the Commission, either in person, or by a representative qualified to practice before the Commission. If no appearance is made, the claim will be heard and disposed of upon the proof on file, if sufficient, or may be continued until a future day, or indefinitely for attendance of the parties, or for the purpose of obtaining further proof or for any other justifiable reason.

The Commission may assign a claim for oral hearing before one or more of its members, or before a duly author-

ized representative or Referee of the Commission. Notice of the time and place of such oral hearing shall be given in advance to both the claimant and the employer. Both parties may be represented at such hearing, either in person, or by a representative qualified to practice before the Commission. When such deputy or Referee makes his report of such hearing, said report shall be referred to the Commission and thereupon notice shall be given to the claimant and the employer of the time and place of hearing such report. When the report of such hearing is submitted, the Commission may approve, modify or disapprove the findings or recommendations contained in such report.

Rule 18—Notice of Hearing.

When a claim is assigned for hearing, the claimant and employer shall be notified by mail of the time and place of the hearing.

When a claim for an award from the State Insurance Fund or the Occupational Disease Fund is assigned for hearing before the Commission, or a duly authorized representative, or a Referee, at least five days shall elapse between the date of mailing notice of such hearing and the date of the hearing. The right to notice as provided herein may be waived by the claimant or employer at the time of filing the application, or at any time prior to hearing.

SUPREME COURT OF THE UNITED STATES.

No. 684.—October Term, 1944.

Copperweld Steel Company, Appellant, *vs.* Industrial Commission of Ohio. } Appeal from the Supreme Court of the State of Ohio.

[April 23, 1945.]

Mr. Justice Roberts delivered the opinion of the Court.

The appellant conducts a manufacturing plant at Warren, Ohio, and is an employer as the term is defined by the workmen's compensation law of the State. In an original proceeding instituted in the Supreme Court, the State's highest tribunal, it challenged awards made to certain of its employees, alleging that the injuries suffered were not incurred in the course of, and did not arise out of, the employment; that the awards were, therefore, beyond the jurisdiction of the Industrial Commission which entered them, and, unless they were abrogated, the appellant would be deprived of its property without due process of law; further, that unless relief were afforded the appellant would be denied the equal protection of the laws.

From a decision sustaining a demurrer and granting judgment for the defendant[1] this appeal was taken. The appellee moved to dismiss. We postponed consideration of the motion to the hearing on the merits, as we were not satisfied that the appellant had properly presented in the court below any issue as to the infirmity of the state law under the federal Constitution, or that the judgment of the Supreme Court of Ohio did not rest on an application of state law adequate to support it.

The questions posed for our decision, the manner of their presentation to the state court and that court's disposition of them will be understood only in the light of the provisions of the workmen's compensation law, the commission's action under that law, and the character of the relief sought by the appellant.

The compensation law is of the compulsory type.[2] It is ad-

[1] The petition was held demurrable (142 O. S. 439) was amended, demurred to, and judgment for defendant was rendered on demurrer (143 O. S. 591).

[2] The summary of the statutory provisions is drawn from the General Code of Ohio, §§ 871-1-871-12; 871-38; 1465-37; 1465-53; 1465-54; 1465-60, 68, 69, 69a, 70, 72, 73, 74, 75, 90.

ministered by an Industrial Commission, which classifies industries in respect of hazards, and fixes premiums to be paid by employers into a state fund for the benefit of injured workmen and the dependents of those killed. It may adopt merit ratings which reduce the premiums of employers having a low casualty rate.

Every employer subject to the Act is required either to pay premiums into the fund, or to qualify as a self-insurer. Payments of compensation for injury or death are made from the state fund in respect of employees of a contributing employer and are paid directly by a self-insuring employer. Employers of both classes are relieved of common-law liability for an employee's injury or death. Those, however, who fail to comply in one of the permissible ways remain liable at law, are denied certain defenses in an action by the employee or his representative and, with their officers, are liable to criminal penalties for failure to comply with the Act. Their employees may, nevertheless, elect to claim compensation, and if it is awarded, an action to recover the amount may be maintained against the employer. Such an action may also be maintained against a self-insuring employer who fails to pay an award.

Should an employer who is subject to the Act fail to pay premiums, or otherwise omit to comply, means are provided to fix civil liability upon him, even to the extent of the appointment of a receiver of his business.

The Commission has authority to hear and decide all questions within its jurisdiction. If it makes an award to a claimant its action is final. Neither the employer nor the claimant is given any appeal or right of review. If the Commission refuses an award on certain grounds specified in the Act the claimant may appeal to a court.

It is conceded by the appellee that if a self-insuring or a non-complying employer is sued for the amount of an award the defense is open to him that the employee granted the award was not injured in the course of his employment or that the injury did not arise out of the employment. In the case of a complying employer who pays premiums into the state fund no such defense is open, for the award is rom the fund and he is not a party to the transaction.

We turn now to the facts alleged in appellant's petition. So far as material they follow. The men who were injured or killed were employees in appellant's plant. At the close of their work they le t the plant in an automobile and chose one of several ways

of egress,—a public road, which at a short distance from the plant crossed the Baltimore & Ohio Railroad's track. While crossing this track the automobile was struck by a train. The Commission, despite appellant's representation that the resulting injuries and deaths were not compensable under the Act, entered awards. By its amended petition the appellant showed that as a result of the inclusion of the awards in its accident experience its premiums had been greatly increased.

On the first hearing the Supreme Court overruled appellant's contention that § 871-38 of the code authorized the institution of proceedings in that court to set aside compensation awards. Treating the petition as one for a writ of prohibition, the court held that remedy unavailable to control the action of the Commission in rendering awards. If considered as an application for mandamus, the court found that the provisions of the workmen's compensation law precluded the issuance of the writ. Construing the prayer as one for injunction the court held that the law of Ohio invested it with no original jurisdiction in equity, and that general equity jurisdiction is conferred on the Courts of Common Pleas of the State. These are all rulings as to the law of Ohio, and, as such, we are without power to review them.

In its amended petition the appellant insisted that its purpose was to raise questions of constitutionality; and that it was without remedy against the loss of its merit rating and the increase of its premiums unless the court should set aside the awards.

In a second opinion the court noticed these allegations. It held that as appellant was not a party to the compensation proceeding and as the awards were payable, not by the appellant, but by the state fund, in which appellant had no property interest, it could not be said that payment of the awards deprived appellant of any property. It said that appellant's interests could be affected only when it was called on to pay increased premiums as a result of the awards, and adverted to the fact that appellant could refuse to pay premiums, and defend a suit for them brought under § 1465-75 of the Act. As to this the appellant urges that the penalties, civil and criminal, which would be imposed upon it and its officers if it pursued such a course amount to a denial of all remedy. Of this more hereafter.

In respect of the denial of equal protection the court below seems not to have dealt with the argument as presented in this court. It quoted decisions which sustained as reasonable classifications of employers for imposition of varying rates of premium adjusted to the risks incident to their enterprises. Except as

above noted, it had nothing to say to the appellant's contention that whereas self-insurers and non-compliers may make the defense of excess of the Commission's jurisdiction when sued for the amount of an award, it cannot assert such a defense when sued for premiums. In our view the answer to both of the constitutional contentions, though not clearly expressed below, is that it does not appear the appellant is without remedy, if entitled to redress. For it is stated, without contradiction, that there are courts in the state having general equity jurisdiction, and if resort to a defense at law involves the perils and penalties the appellant asserts, we are not advised that equity will not consider an application for relief. Certainly we can neither require the Supreme Court to exercise a jurisdiction it finds is not conferred upon it by law, nor express any view as to the relief to which the appellant may be entitled, in advance of its availing itself of a forum apparently not foreclosed to it for the protection of its asserted constitutional rights.

What has been said assumes that we have jurisdiction of the appeal. The assumption involves the answer to two questions. First, were questions under the Fourteenth Amendment presented and decided below? We think that the appellant disclosed, and the court below understood, that the provisions of the Fourteenth Amendment of the federal Constitution were invoked. Not only does the Ohio Constitution embody no provisions in the words of that Article, but it is doubtful that it contains any equivalent provisions. While the appellant's petition did not mention the Amendment it used the exact phraseology in which it is couched. The pleadings and the expressions found in the opinions lead us to conclude that questions under the federal charter were presented and considered.

Secondly, was the constitutional validity of the state statute drawn in question? If not, we have no jurisdiction on appeal. But, as violation of the federal Constitution by the decision of the state court, is, in any case, involved, we have jurisdiction to review the decision on certiorari (28 U. S. C. 344(c)). The question of the propriety of entertaining the appeal need not be decided, in the view we take of the basis of the state court's judgment. Inasmuch as we conclude that decision was grounded upon the view that the appellant had not pursued the remedy afforded by state law for the vindication of any constitutional right it claimed was violated, we must dismiss the appeal, and deny certiorari.

So ordered.